IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

Criminal Appeal No. 405-DB of 2005

Date of Decision :- August 28, 2006

Mukhtiar Singh and another ....APPELLANTS

VERSUS

The State of Punjab ....RESPONDENT

CORAM: HON'BLE MR. JUSTICE MEHTAB S.GILL
HON'BLE MR. JUSTICE BALDEV SINGH

Present::- Mr. S.P.S.Sidhu, Advocate
for appellant- Ginder Singh.

Mr. H.S.Rakhra, Advocate
for appellant-Mukhtiar Singh.

Mr. S.S.Randhawa, Senior D.A.G. Punjab.

MEHTAB S.GILL, J.

This is an appeal against the judgment/order dated 13.5.2005/14.5.2005 of the Special Judge, Moga, whereby the trial Court convicted Mukhtiar Singh @ Mukha son of Mohinder Singh and Ginder Singh son of Naranjan Singh under Section 15 of the Narcotic Drugs and

Psychotropic Substances Act, 1985 (hereinafter referred to as "NDPS Act") and sentenced them to undergo rigorous imprisonment for 15 years and to pay a fine of Rs. 1,50,000/-, in default to undergo rigorous imprisonment for a period of one year.

The case of the prosecution is unfolded by ruqa Ex.P18, sent by SI Dev Raj, SHO Police Station, Dharamkot from the area of Village Badhuwal at 11.35 P.M. to the MHC Police Station, Dharamkot. He stated in the ruqa that he along ASI Harjit Singh, ASI Subhash Chand, ASI Darshan Singh, ASI Manjit Singh, HC Krishan Kumar, HC Santokh Singh and HC Pritam Singh in official Gypsy No. PB-08-2272 driven by Constable Kuldeep Kumar, were present near the bus stand of Village Badhuwal, in connection with patrolling on 18.12.2002. At about 8.45 P.M., a special informer gave the information that Mukhtiar Singh alias Mukha son of Mohinder Singh, resident of Kot Mohammad Khan and Ginder Singh son of Niranjan Singh, resident of Village Daulewala PS Kot Ise Khan, have brought bags containing poppy husk in a truck and they have kept them concealed in a drain dug by the telephone department about 100 yards short of bus stand Kot Mohammad Khan. They were standing there in order to take the bags to some other place. SI Dev Raj believing the information to be correct, brought it to the notice of SP (D) Moga, Sh. Ashok Kumar through wireless and requested him to reach the spot. Thereafter SI Dev Raj along with police officials proceeded to conduct the raid. They reached the spot at about 9.15 P.M. Two persons succeeded in running away from the spot on seeing the lights of the gypsy. The persons who ran away were Mukhtiar Singh alias Mukha and Ginder Singh, who

were identified by HC Krishan Kumar, who knew them. At about 10.00 P.M., SP (D) along with his gunmen reached the spot in his official gypsy. On the directions of SP (D) Ashok Kumar, SI Dev Raj opened the gunny bags, wherein there was poppy husk, in all 19 bags lying there. Out of these bags, 250 grams of poppy husk was taken out as sample from each bag. After taking the samples from each bag, the bags weighed 34 Kgs. 750 grams each. 19 bags containing the poppy husk were converted into separate parcels. The parcels containing the samples and the parcels of gunny bags were sealed by SI Dev Raj with his seal "DR" and the SP (D) also sealed the bags with his seal "AK". A specimen seal was prepared separately. After its use, the seal was handed over to ASI Harjit Singh. The parcels of samples and gunny bags were taken into possession vide separate memos. On the basis of this ruqa, FIR Ex.P18/A was registered.

The prosecution to prove its case brought into the witness box MHC Jagsir Singh as PW1, Constable Karnail Singh as PW2, SI Kirpal Singh as PW3, Ashok Kumar, Photographer as PW4, HC Krishan Kumar as PW5, ASI Harjit Singh as PW6, HC Rajinder Singh as PW7 and SI Dev Raj as PW8.

Learned counsel for the appellants has argued that no test identification parade was held to identify the appellants, who had run away from the place of occurrence. The information given to SI Dev Raj PW8 was on the basis of secret information. The two persons, who had run away when the police gypsy approached them, would not have done so as they did not know that the gypsy coming towards them was that of the police officials. The police officials in the raiding party were 9 in number. They

were armed. No effort was made by them either to catch hold of the appellants or at least to fire in the air to scare them so that they would surrender. Appellants were identified for the first time in Court. The poppy husk was recovered from a public place as alleged by the prosecution. There was a drain of the telephone department, in which it was lying. Conscious possession of the appellants could not be established, as they were mere strangers to the place where the contraband was lying. Section 42 of the NDPS Act was not complied with. Though as per the prosecution it is on secret information the raid was conducted, but no ruqa was sent to the superior police officer or to the police station to register a case before the raid was conducted. No independent witness was joined nor the Investigating Officer tried to join any independent witness. There are material discrepancies in the statements of the prosecution witnesses. ASI Harjit Singh PW6 has stated that the bags of poppy husk were not lying in the pit which had been dug by the telephone department, while SI Dev Raj PW8, has stated that some of the gunny bags were lying in the pit and the others were placed next to them.

The defence version as stated by Dr. Balwinder Singh DW1 and Bhubhesh Chander DW2 and the FIR put on record by HC Baldev Singh DW3, shows that the police was inimical towards the appellants. The grandfather of the wife of appellant Ginder Singh had filed Criminal Writ Petitions in the High Court against the police officials, which are Ex.D1 and Ex.D2. The police was pressurizing appellant Ginder Singh to ask his wife's grandfather to withdraw the Writ Petitions. Ginder Singh did not oblige and a false case was foisted upon him.

Learned counsel for appellant- Mukhtiar Singh, Mr. H.S. Rakhra, has adopted the arguments of the counsel for appellant- Ginder Singh and further added that though the information given was secret in nature, but the Investigating Officer did not make any effort to join an independent witness. The alleged truck which had brought the contraband was not taken into possession, nor any effort was made to come to a conclusion as who was the owner of the truck. The link evidence qua the case property sent to the Chemical Examiner and affidavits submitted by MHC Jagsir Singh Ex.P1 and Constable Karnail Singh Ex.P2, show that the case property was not kept properly in the malkhana. MHC Jagsir Singh PW1 has stated, that the bags were stitched when they were produced before him, for depositing in the malkhana. He could not tell as to whether there was any trademark on the bags. The inventory prepared under Section 52(a) of the NDPS Act showed that some bags had marking in English as “Sayan India”. On some of the bags, it was written “Sri Jaya Enterprises Brand”. On some, it was written “Pandvai India”, on some it was written as “Nagar India”, on some “ Tadi Patri”, on some “Mahuna Surat India”, on some “Bar Dol India” and on some “Chemicals Limited Porbandar”. The property deposited and the inventory prepared under Section 52(a) of the NDPS Act by SI Kirpal Singh PW3, do not corroborate each other.

Learned counsel for the State has argued that the case property was produced before the Magistrate by SI Dev Raj PW8. Application Ex.P20 was made and the Magistrate passed his order Ex.P20/A, whereby he directed the Investigating Officer to produce the case property before the MHC and to deposit the same in the malkhana. When samples were being

taken on the directions of the Magistrate as per Section 52(a) of the NDPS Act, the whole process was being photographed and Ashok Kumar, Photographer PW4, has testified to this effect. Section 42 of the NDPS Act was complied with. The Investigating Officer informed his immediate superior i.e. the DSP and what was done during the search. The search was done on the directions of his superior officer i.e. SP (D) Ashok Kumar. There was no need for a test identification parade being held, as appellants had been identified by a secret informer and also by HC Krishan Kumar PW5. At the time of raid, appellants were sitting on the gunny bags and HC Krishan Kumar PW5 knew them personally. He had remained posted at Police Station Dharamkot several times. Under Section 313 Cr.P.C., it has been put to the appellants that they were sitting on the contraband when the police party had come. Criminal Misc. petitions Ex.D1 and Ex.D2 were filed against the police officials after a gap of 4-5 years. None of the police officials, who were part of the raiding party, were party in the writ petitions as per documents Ex.D1 and Ex.D2.

We have heard the learned counsel for the parties and perused the record with their assistance.

Learned counsel for the appellant has vehemently argued that no test identification parade was held. It should have been done as the case of the prosecution is that, both the appellants ran away on seeing the police party. It has come in the evidence of the Investigating Officer SI Dev Raj PW8, that on 18.12.2002 he received secret information at about 8.45 P.M. that accused Mukhtiar Singh @ Mukha and Ginder Singh were concealing gunny bags and were planning to shift these gunny bags from that place on a

truck. In the ruqa Ex.P18, it has been mentioned, that at 8.45 P.M. SI Dev Raj received secret information that Mukhtiar Singh @ Mukha son of Mohinder Singh, Rai Sikh, resident of Kot Mohammad Khan and Ginder Singh son of Niranjan Singh, Rai Sikh, resident of Village Daulewala, P.S. Kot Ise Khan, have concealed poppy husk in a drain dug by the telephone department, 100 yards short of bus stand Kot Mohammad Khan. It is thereafter that SI Dev Raj PW8 along with the police party consisting of HC Krishan Kumar PW5, left for the place which the secret informer had given. The police party reached the spot at about 9.15 P.M. where the gunny bags were lying. He has further stated that the appellants were seen sitting on the gunny bags and they (appellants) on seeing the police gypsy, ran away. They were identified by HC Krishan Kumar PW5. HC Krishan Kumar PW5, in his testimony before the Court, has stated that he along with ASI Harjit Singh PW6, ASI Subhash Chander, ASI Manjit Singh, ASI Darshan Singh and SI Dev Raj PW8, were present at bus stop of Village Baduwal. SI Dev Raj PW8 received secret information to the effect that Mukhtiar Singh @ Mukha resident of Kot Mohamad Khan and Ginder Singh son of Niranjan Singh, resident of Daulewal had brought bags of poppy straw on a truck. The police party after sending a message to Shri Ashok Kumar SP (D), Moga to reach the spot, went to the place where the poppy husk was lying. Appellants who were sitting on the gunny bags on seeing the gypsy, ran away and managed to escape. HC Krishan Kumar PW5 identified both the appellants by name and address, as they were known to him, as he had been posted in Police Station Dharamkot several times before the arrest of the appellants in this case. It is clear from the statements of both SI Dev Raj

PW8 and HC Krishan Kumar PW5 that identification of the appellants to the point of their fathers' name, the village they belonged to was known to the police party. Having them identified in a test identification parade would have had no meaning, after they had already been identified by the police at the time when the contraband was seized. It has come in evidence of SI Dev Raj PW8, that the police party tried to catch them and followed them for 3-4 killas but as it was dark, they managed to escape.

Further it was argued by the appellants' counsel that, no independent witness was joined by the police party though the information was of a secret nature. We cannot oblivious of the fact that the contraband was recovered on 18.12.2002 at 9.15 P.M. In the month of December, at that time nobody ventures out of the house as it becomes dark and cold. The traffic on the roads also come to a standstill. It could not have been possible for the Investigating Officer to join an independent witness on a cold dark night, when he knew that the appellants were preparing to lift the contraband in a truck and to take it away. It was more important for the Investigating Officer to first apprehend the appellants than start looking around for an independent witness.

Conscious possession of the contraband by the appellants is fully established. SI Dev Raj PW8, HC Krishan Kumar PW5 and ASI Harjit Singh PW6 have categorically stated that, appellants were sitting on the gunny bags and on seeing the police party, they ran away. They could not be apprehended though they were chased, as it was a dark night. Appellants were recognised in the headlights of the gypsy. The contraband was taken into possession, after Ashok Kumar SP (D) Moga, a Gazetted Officer came

to the spot and under his instructions, the samples were taken into possession and the main body of the contraband and the samples were sealed with the seal of SI Dev Raj PW8 “DR” and by Sh. Ashok Kumar SP (D), Moga with his seal “AK”. ASI Harjit Singh PW6, has in his testimony before the Court, stated that Sh. Ashok Kumar SP(D), Moga has since died. He has identified the signatures of Sh. Ashok Kumar SP(D), Moga on memo Ex.P16, as he had worked under him. He was conversant with his handwriting and signatures. After using the seal, SI Dev Raj PW8 handed it over to ASI Harjit Singh PW6. ASI Harjit Singh has also stated that before the police party had left the police station at 8.15 P.M., a DDR had been recorded that they were going for patrolling.

SI Dev Raj PW8, has in his testimony before the Court, stated that the case property produced before the Ilaqa Magistrate on 19.12.2002 and on his request Ex.P20, the learned JMIC passed order Ex.P20/A and directed that the case property be deposited with MHC PS Dharamkot. It was then that he deposited the case property, with MHC Jagsir Singh PW1, along with the sample seal. Special report Ex.P17 was sent to the DSP, Dharamkot, Mr Partap Sarangal, who received it vide endorsement Ex.P17/A.

Learned Counsel for the appellant-Ginder Singh has argued that it is a case of false implication. As per document Ex.D1, Sona Singh, the grandfather of the wife of Ginder Singh appellant had filed Criminal Misc. petitions in the High Court against some police officials of District Ferozepur. Criminal Misc. petitions are Ex.D1 and Ex.D2. Sona Singh was in litigation with the police and the police officials were threatening the

appellant to ask Sona Singh to withdraw the Writ Petitions, or he would be falsely implicated in a case. This argument of learned counsel for the appellants does not cut much ice. Document Ex.D1 is Criminal Misc. No. 19855 of 1997. A petition filed in the High Court under Section 482 Code of Criminal Procedure for an inquiry and registration of an FIR against three police officials i.e. Ram Singh Inspector CIA Staff, Ferozepur, Jaswant Singh ASI, Ferozepur and Joginder Kumar DSP, Ferozepur. This Criminal Misc. petition was filed in 1997. The present recovery is dated 18.12.2002 i.e. after a gap of five years. None of the police officials in Criminal Misc. No. 19855 of 1997 were a party with SI Dev Raj PW8, when the contraband was recovered from the appellants. Similarly, document Ex.D2 is Criminal Misc. No.10628-M of 1998, which was filed by Sona Singh against some police officials. They also are not the same as ones who were in the patrolling party of SI Dev Raj PW8.

Dr. Balwinder Singh DW1, who came into the witness box, has stated, that on 26.10.2003 at 5.05 P.M., he medico legally examined Ginder Singh son of Niranjan Singh. He found injuries on his person. We are of the considered view that these injuries cannot be, in anyway, related to the time of recovery of the contraband. The contraband was recovered on 18.12.2002, while Ginder Singh received injuries on 26.10.2003 i.e. after about 10 months. Dr. Balwinder Singh DW1 has further stated that he examined Simple Kaur wife of Niranjan Singh, Constable Surinder Kumar, Constable Narinder Singh, HC Sukhdev Singh, ASI Nirmal Singh, HC Baldev Singh and HC Avneet Singh on the same day. Without going further into the statement of this witness, it seems that some sort of a fight

took place on 26.10.2003 between Ginder Singh the present appellant and some police officials. The police officials injured are not the ones who were in the raiding party with SI Dev Raj PW8. Appellant Ginder Singh has also tried to make out a case, that on 2.12.2002 his wife had died and he was busy in looking after the guests coming to his house, to mourn the death of his wife. The present recovery has been made after 16 days of the death of his wife. Apart from his statement, there is no other evidence to show that guests were coming to his house and he was all the time busy in looking after them.

As per the observations as stated above, we do not find any infirmity in the judgment of the trial Court, only that the recovery of contraband does not commensurate with the sentence awarded. Ends of justice would be met by reducing the sentence from 15 years rigorous imprisonment to 10 years rigorous imprisonment. Fine is reduced from Rs. 1,50,000/- to Rs. 1,00,000/- each. In default of payment of fine, appellants shall undergo one year rigorous imprisonment.

With the above modification in sentence and fine, appeal of the appellants is dismissed.

(MEHTAB S.GILL)
JUDGE

(BALDEV SINGH)
JUDGE

August 28, 2006
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WHETHER TO BE REFERRED TO REPORTER? YES/NO